

**IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

Godevithanage Indrani Senaratne
{Nee Wickremasinghe)
No.14A-1, Anderson Road,
Dehiwela.

Plaintiff-Respondent-Petitioner

Vs

C.A. L.A NO.47/2005
D.C.COLOMBO CASE NO.19524/L

1. Munahennedige Yavindra Manawadu
No.28/3, Huludagpda Lane,
Off Templers Road,
Mount Lavinia.
2. M/S Pramuka Management Financial Services
No.30/1, 63-J, Longdon Place,
Colombo 7.
3. M/S Pramuka Savings and Development Bank
No.316, Galle Road
Colombo 3
4. M/S Savemore Investment (Pvt) Company
No.54, Walukarama Road
Colombo 3.

**1st to 4th Defendant-Respondent-
Respondents**

Shahla Cassim
Formerly of No.7, Dickmans Road,
Duplication Road, Colombo 5,

And presently of No.18, Charles Place,
Colombo 3.

Petitioner-Respondent

BEFORE : **SISIRA DE ABREW J
ANIL GUNERATNE J
K.T.CHITRASIRI J**

COUNSEL : Ikram Mohamed P/C with Thisath Wijegunawardena
and Milhan Mohamed Attorneys-at-Law for the
Plaintiff-Respondent-Petitioner.

Kushan de Alwis P/C with Ranjiv Wijesinghe Attorney-
at-Law instructed by Sudath Perera Associates for the
Petitioner-Respondent.

ARGUED ON : **16.01.2013**

**WRITTEN
SUBMISSIONS
FILED ON** : 29th January 2013 by the Plaintiff-Respondent-
Petitioner

30th January 2013 by the Petitioner-Respondent.

DECIDED ON : **28. 03. 2013**

CHITRASIRI, J.

This is an application seeking to set aside the order dated 27th January 2005 of the learned District Judge of Colombo. By that order, an application made under Section 18 of the Civil Procedure Code to add the petitioner-respondent namely, Shahla Cassim, as a party to the action had been allowed.

Being aggrieved by the aforesaid order of the learned District Judge allowing the petitioner-respondent (hereinafter referred to as the respondent) to intervene into the action, the plaintiff-respondent-petitioner (hereinafter referred to as the

petitioner) filed this leave to appeal application. Consequently, this Court granted leave on 10.12.2007 to proceed with the appeal. Thereafter, a Divisional Bench was constituted to determine the issue and then the argument was taken up before this Divisional Bench on 16.1.2013.

The issue before this Court is whether the learned District Judge is correct in adding the respondent as a party to the action in terms of Section 18 of the Civil Procedure Code. Therefore, it is necessary to examine the scope of the said Section 18 of the Civil Procedure Code. The said Section reads thus:

- 18 (1) The court may on or before the hearing, upon the application of either party, and on such terms as the court thinks just, order that the name of any party, whether as plaintiff or as defendant improperly joined, be struck out; and the court may at any time, either upon or without such application and on such terms as the court thinks just, order that any plaintiff be made a defendant or that any defendant be made a plaintiff, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the court may be necessary in order to enable the court effectually and completely to adjudicate upon and settle all the questions involved in that action be added.*
- (2) Every order for such amendment or for alteration of parties shall state the facts and reasons which together form the ground on which the order is made. And in the case of a party being added, the added party or parties shall be named, with the designation "added party" in all pleadings or processes or papers entitled in the action and made after the date of the order".*
- [Emphasis added]**

The above Section permits Court to add a party to an existing action provided such an addition is necessary for the Court to adjudicate all the questions involved in the action effectually and completely. Sufficient

authorities are found to determine the way in which the said criteria had been made use of by Courts.

[Weerapperuma and Another V De Silva and Another 61 NLR 481, Arumugam Coomaraswamy V Andiris Appuhamy and others 1985 (2) SLR 219, Hilda Enid Perera V Somawathie Lokuge and another 2000 (3) SLR 200, Keerthiwansa V Urban Council Horana 2001 (3) SLR 252, Colombo Shipping Company limited V Chirayu Clothing (Pvt) Limited 1995 (2) SLR 97, Robert Dassanayake and Another V Peoples Bank and Another 1995 (2) SLR 320, Y.B.Alackman V R.M. Charlotte Perera & another BASL 10/11/94 C/A No. 594/93]

By looking at the impugned order, it is seen that the learned District Judge had been aware of the aforesaid criteria when he decided to allow the application of the respondent to intervene. However, when this matter was taken up for hearing before this Divisional Bench, learned President's Counsel for the petitioner raised the following point which had not been adverted to by the learned District Judge.

Learned President's Counsel *inter alia* argued; **whether a person could be added in terms of section 18 of the Civil Procedure Code relying upon the circumstances that has occurred subsequent to the filing of the action to which the application to intervene had been made.**

The date of filing of this action in the District Court of Colombo is 13.2.2002. The petition of the respondent was filed on 29.3.2004. According to that petition, it is found that her interests in the property in suit commenced only after the agreement bearing No.749 dated 28.6.2002 came into existence. Therefore, it is clear

that the claim of the respondent in respect of the property in dispute had begun only after 28.6.2002. Hence, it is clear that the respondent's interest in the property upon which she had relied upon to file the application for intervention had come into existence only after filing of the action.

As stated above, the argument advanced by the learned President's Counsel is that no party could be added to an action in terms of Section 18 of the Civil Procedure Code, if that application depends on the circumstances taken place after the institution of the action. If his contention is correct in law, the impugned order has to be set aside disallowing the application for intervention.

Accordingly, I will now turn to consider the law relevant to the issue at hand. The criterion behind Section 18 of the Civil Procedure Code is to make sure complete adjudication and settlement of all the questions that has arisen in that action. This action is filed to adjudicate a dispute between the plaintiff and the original four defendants, in respect of the land referred to in the schedule to the plaint. It is correct that the respondent also is claiming rights to the same land put in suit but her rights came into existence only after the filing of this action. Therefore, the question arises whether it is correct to consider the rights of the respondent in this action in order to adjudicate and settle the disputes amongst the parties to the action.

In the case of **Weerapperuma V De Silva [61 NLR 481] Basnayake C J** held:

"To decide that ground for adding a party the Court must answer the following questions:

- (1) What are the questions involved in the action? and*
- (2) Is the presence of the party seeking to be added necessary in order to enable the court effectually and completely to adjudicate upon and settle them ?.*

To answer question (1) the meaning of the expression "questions involved in the action" must first be ascertained. The expression "action" refers to the proceedings instituted by the plaintiff, against the parties named by him in the plaint, for the redress or relief he seeks from the Court. The plaint would disclose the cause of action and the answer of the defendant would disclose the grounds on which he resists the plaintiff's claim for redress or relief. When a question is so inextricably mixed with the matters in dispute in an "action" as to be inseparable from them and the action itself cannot be decided without deciding it, the question may be said to be involved in the action. Any question arising in the case set up by an intervenient in his petition and not arising in the case set up in the pleadings of the parties is not a question involved in the action"
(Emphasis added)

It is trite law that actions are decided as per the rights of the parties as at the commencement of the action. In other words, only the facts that existed before or at the time of filing the action are to be considered in determining actions. This position had been upheld by the following authorities.

In **Silva V Fernando [15 NLR 499]** it was held:

"no retrospective effect can be given to the letter, as to vest in the plaintiff a title at the commencement of the action.

The rights of the parties to an action have to be ascertained as at the commencement of the action."

In the case of **Talagune V De Livera [1997 (1) SLR 253]** Senanayake, J held thus:

"the Plaint was filed on 18.03.85 and under our Code, there is no provision which for a defendant to plead by way of defence, matter arising subsequent to the institution of action, the judgment must determine the rights of the parties as

on the date of the institution of the action. This was the position as held in 2 Times Report 192. It was also held in the case of Silva v. Fernando. The rights of the parties to an action have to be ascertained as at the commencement of the action. This is well settled law”.

The authorities referred to above clearly show that the matters that came into existence after filing of the action cannot be considered in adjudicating a dispute in a particular action. However, it must be noted that non-consideration of matters that came into existence after filing of the action is applicable only when it comes to adjudication but looking at such matters may not prevent the parties arriving at a settlement of the dispute on their own or under similar circumstances. Accordingly, it is my considered view that the circumstances that came into existence subsequent to the filing of the action are irrelevant in adjudicating that action. Therefore, the claim of the respondent in this case also cannot be entertained to determine the action of the petitioner since she (respondent) is relying upon the facts which have taken place after the filing of this case.

In the circumstances, it is clear that the matters upon which the respondent is relying upon for her to become a party to the action are not necessary for the complete adjudication and settlement of all the questions arisen in this case. Probably, her remedy is to file a fresh case against whom she has a cause of action. Indeed, learned Counsel for the respondent on the day of the hearing brought to the notice of Court that she has already filed an action to vindicate her rights arising out of the agreement upon which she relied to make her application to intervene.

In the circumstances, I am inclined to accept the contention of the learned President's Counsel for the petitioner and decide that the respondent is not entitled to be added as a party in terms of Section 18 of the Civil Procedure Code, to the action filed by the petitioner since her claim rests on matters that came into existence after the petitioner filed this action.

For the aforesaid reasons, I set aside the order of the learned District Judge made on 27.01.2005. Accordingly, I make order disallowing the application of the petitioner-respondent made in the petition dated 29.03.2004. Having considered the circumstances of the case, I make no order as to the costs of this appeal.

Application allowed without costs.

JUDGE OF THE COURT OF APPEAL

SISIRA DE ABREW J.

JUDGE OF THE COURT OF APPEAL

ANIL GUNARATNE J.

JUDGE OF THE COURT OF APPEAL